



6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 228

[EPA-R06-OW-2014-0234; **FRL- 9909-67-Region-6**]

#### **Ocean Dumping: Proposed Cancellation and Modification of Final Site Designations**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) proposes to cancel the final designation of two Ocean Dredged Material Disposal Sites (ODMDSs) located in the Gulf of Mexico near the Houma Navigational Canal (HNC) and near the Mississippi River Gulf Outlet (MRGO) Canal, Louisiana. Both sites are EPA-approved ocean dumping sites for the disposal of suitable dredged material. This proposed action is being taken because there is no clear future need for the sites. Additionally, EPA proposes to modify the period of use, use restriction, and name of the Homeport Project ODMDS located in the Gulf of Mexico offshore of Port Aransas, Texas.

**DATES:** Comments on this proposed rule must be received on or before **[Insert date 45 days from date of publication in the Federal Register]**.

**ADDRESSES:** Submit your comments, identified by Docket No. EPA-R06-OW-2014-0234, by one of the following methods:

Federal e-Rulemaking Portal: <http://www.regulations.gov>; follow the online instruction

for submitting comments.

- E-mail: Dr. Jessica Franks at [franks.jessica@epa.gov](mailto:franks.jessica@epa.gov).
- Fax: Dr. Jessica Franks, Marine and Coastal Section (6WQ-EC) at fax number 214-665-6689.
- Mail: Dr. Jessica Franks, Marine and Coastal Section (6WQ-EC), Environmental Protection Agency, Mailcode: (6WQ-EC), 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733.

*Instructions:* Direct your comments to Docket No. EPA-R06-OW-2014-0234. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at [www.regulations.gov](http://www.regulations.gov), including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through [www.regulations.gov](http://www.regulations.gov) or e-mail. The [www.regulations.gov](http://www.regulations.gov) web site is an “anonymous access” system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through [www.regulations.gov](http://www.regulations.gov) your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the [www.regulations.gov](http://www.regulations.gov) index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in [www.regulations.gov](http://www.regulations.gov) or in hard copy at the Marine and Coastal Section (6WQ-EC), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733. The file will be made available by appointment for public inspection in the Region 6 FOIA Review Room between the hours of 8:30 a.m. and 4:30 p.m. weekdays except for legal holidays. Contact the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below. If possible, please make the appointment at least two working days in advance of your visit. There will be a 15 cent per page fee for making photocopies of documents. On the day of the visit, please check in at the EPA Region 6 reception area at 1445 Ross Avenue, Suite 700, Dallas, Texas.

**FOR FURTHER INFORMATION CONTACT:** Jessica Franks, PhD, Marine and Coastal Section (6WQ-EC), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202-2733, telephone (214) 665-8335, fax number (214) 665-6689; e-mail address [franks.jessica@epa.gov](mailto:franks.jessica@epa.gov).

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### **I. Potentially Affected Persons**

Persons potentially affected by this action include those who seek or might seek permits or approval by EPA to dispose of dredged material into ocean waters pursuant to the Marine Protection Research and Sanctuaries Act, 33 U.S.C. 1401 *et seq.* EPA's action would be relevant to persons, including organizations and government bodies seeking to dispose of dredged

material in ocean waters offshore of Terrebonne, Louisiana, the Mississippi River Gulf Outlet (MRGO) Canal, Louisiana, and Corpus Christi, Texas. Currently, the U.S. Army Corps of Engineers (Corps) and other persons with permits to use designated sites offshore Terrebonne, Louisiana, the Mississippi River Gulf Outlet (MRGO) Canal, Louisiana, and Corpus Christi, Texas would be most impacted by this final action. Potentially affected categories and persons include:

Category	Examples of potentially regulated persons
Federal government .....	USACE Civil Works and O & M projects; other Federal agencies, including the Department of Defense.
Industry and general public ...	Port authorities, marinas and harbors, shipyards and marine repair facilities, berth owners
State, local and tribal governments .....	Governments owning and/or responsible for ports, harbors, and/or berths, Government agencies requiring disposal of dredged material associated with public works projects

This table is not intended to be exhaustive, but rather provides a guide for readers regarding persons likely to be affected by this action. For any questions regarding the applicability of this action to a particular entity, please refer to the contact person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

## **II. Background**

Section 102(c) of the Marine Protection, Research, and Sanctuaries Act (MPRSA) of 1972, as amended, 33 U.S.C. 1401 et seq., gives the Administrator of EPA the authority to designate sites where ocean disposal may be permitted. On October 1, 1986, the Administrator delegated the authority to designate ocean disposal sites to the Regional Administrator of the Region in which the sites are located. These proposed cancellations and modification are being made pursuant to that authority.

The EPA Ocean Dumping Regulations promulgated under MPRSA (40 CFR chapter I, subchapter H, § 228.11) state that modifications in disposal site use which involve withdrawal of disposal sites from use or permanent changes in the total specified quantities or types of wastes permitted to be discharged to a specific disposal site will be made by promulgation in this part 228. These site cancellations and modification of types of wastes permitted to be discharged to a specific disposal site are being published as proposed rulemaking in accordance with § 228.11(a) of the Ocean Dumping Regulations, which permits the withdrawal of designated disposal sites from use or changes in the total specified quantities or types of wastes permitted to be discharged to a specific disposal site based upon changed circumstances concerning use of the site.

## **III. Proposed Action**

The proposed cancellation of the designations of these sites is needed as a housekeeping measure. In essence, these ODMDSs either are no longer a suitable disposal option or have no foreseeable need. The Houma ODMDS is now partially occupied by the Houma Navigational Canal. The U. S. Corps of Engineers has re-aligned the Cat Island Pass portion of the HNC

several times since the construction of this federal navigation channel in order to retain a channel segment that requires little maintenance dredging due to the natural hydrodynamics in the vicinity. This particular portion of the HNC Cat Island Pass channel is characterized by an area of deeper water (erosional zone) that is moving westwards. Once this deeper water erosional zone has moved far enough west from the Corps's channel alignment that area of the channel begins to shoal (becomes a depositional zone). To avoid increased maintenance dredging costs, the Corps re-aligns this portion of the channel westwards to "keep up" with the deeper water zone as it continues to migrate westwards. The Houma ODMDS is located on the west side of this channel, and the deeper water zone has migrated into the ODMDS boundaries. The Houma ODMDS has not been used for more than twenty (20) years. Instead, dredged material from the HNC has been used beneficially under Section 404 of the Clean Water Act on the two (2) single point discharge (SPD) sites located within the ODMDS. It is the Corps intention to continue this practice. As such, this type of placement is excluded by definition from regulation by MPRSA. De-designation of the Houma ODMDS will allow the Corps to expand the beneficial use of dredged material for the creation of durable islands for seasonal bird nesting areas regulated under Section 404 of the Clean Water Act.

The Mississippi River-Gulf Outlet (MRGO) ODMDS is no longer needed. On June 5, 2008 the Assistant Secretary of the Army for Civil Works forwarded the Final MRGO Deep-Draft De-authorization Report to Congress officially de-authorizing the MRGO from the Gulf Intercoastal Water Way (GIWW) to the Gulf of Mexico as a federal navigation project. The report also authorized the construction of a rock closure structure across MRGO which was completed in late July 2009.

The proposed modification of the period of use and use restriction on the Homeport Project ODMDS is needed to change the use of the site to include suitable dredged material from the greater Corpus Christi, Texas vicinity over an indefinite period of time. The Homeport Project ODMDS was designated to provide a disposal area for placement of suitable construction dredge material from the U.S. Navy's Homeport Project at Corpus Christi/Ingleside, Texas. The Homeport Project never materialized and therefore, the ODMDS was never used. Use of the ODMDS was limited to suitable dredged material from the Homeport Project over a 50 year period. There is a need for placement of construction dredged material from the Corpus Christi Channel Channel Improvement Project (CIP) as described in the Final Environmental Impact Statement (FEIS) for the *Corpus Christi Ship Channel Channel Improvements Project Corpus Christi and Nueces Bays Nueces and San Patricio Counties, Texas* published in April 2003. Based on the FEIS, suitable dredged material will be placed beneficially in the location of the Homeport Project ODMDS under Section 404 of the Clean Water Act (CWA). CWA Section 404 has jurisdiction in the Territorial Sea or coastal waters from the baseline to three (3) nautical miles seaward. Because the Homeport Project ODMDS is located beyond the boundary of the Territorial Sea and in the open ocean, the CWA Section 404 does not have jurisdiction. As a result there is a need to change the use restriction placed on the Homeport Project ODMDS to include suitable dredged material from the greater Corpus Christi, Texas vicinity. Since dredged material placement at this ODMDS is expected to be an on-going process over many years, the period of use is being changed to continuing use. EPA also proposes to change the name of the Homeport Project ODMDS to Corpus Christi New Work ODMDS. The current name is no longer applicable since it was the name of the project at the time the ODMDS was designated.



## **IV. Administrative Review**

### **1. Executive Order 12866**

Under Executive Order 12866 (58 FR 51735, October 4, 1993) EPA must determine whether the regulatory action is “significant,” and therefore subject to office of Management and Budget (OMB) review and other requirements of the Executive Order. The Order defines “significant regulatory action” as one that is likely to lead to a rule that may:

- (a) Have an annual effect on the economy of \$100 million or more, or adversely affect in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or Tribal governments or communities;
- (b) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- (c) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof: or
- (d) Raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in the Executive Order.

This Proposed Rule should have minimal impact on State, local, or Tribal governments or communities. Consequently, EPA has determined that this Proposed Rule is not a “significant regulatory action” under the terms of Executive Order 12866.

### **2. Paperwork Reduction Act**

The Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, is intended to minimize the reporting and recordkeeping burden on the regulated community, as well as to minimize the cost of Federal

information collection and dissemination. In general, the Act requires that information requests and recordkeeping requirements affecting ten or more non-Federal respondents be approved by OMB. Since the Proposed Rule would not establish or modify any information or recordkeeping requirements, but only clarifies existing requirements, it is not subject to the provisions of the Paperwork Reduction Act.

### **3. Regulatory Flexibility Act, as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996**

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

This proposed rule will not impose any requirements on small entities. The modification of the Homeport Project ODMDS broadens the use of the site providing an additional option for dredged material placement in the Corpus Christi, Texas vicinity. The removal of the Houma ODMDS will allow for the beneficial use of dredged material under CWA Section 404 for the creation of bird islands. The closing of the Mississippi River Gulf Outlet Navigation Channel was mandated by Congress and therefore the associated ODMDS is no longer needed.

For these reasons, the Regional Administrator certifies, pursuant to section 605(b) of the RFA, that the Proposed Rule will not have a significant economic impact on a substantial number of small entities.

#### **4. Unfunded Mandates Reform Act**

This Proposed Rule contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) of 1995 (Pub. L. 104-4) for State, local, or tribal governments or the private sector that may result in estimated costs of \$100 million or more in any year. It imposes no new enforceable duty on any State, local or tribal governments or the private sector nor does it contain any regulatory requirements that might significantly or uniquely affect small government entities. Thus, the requirements of section 203 of the UMRA do not apply to this Proposed Rule.

#### **5. Executive Order 13132: Federalism**

Executive Order 13132, entitled “Federalism” (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications. “Policies that have federalism implications” are defined in the Executive Order to include regulations that have “substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.”

This Proposed Rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132.

## **6. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments**

Executive Order 13175, entitled “Consultation and Coordination with Indian Tribal Governments” (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure “meaningful and timely input by Tribal officials in the development of regulatory policies that have Tribal implications.” This Final Rule does not have Tribal implications, as defined in Executive Order 13175.

## **7. Executive Order 13045: Protection of Children from Environmental Health and Safety Risks**

This Executive Order (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be “economically significant” as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, EPA must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by EPA. This Proposed Rule is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866, and because EPA does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children.

## **8. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use Compliance with Administrative Procedure Act**

This Proposed Rule is not subject to Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

#### **9. National Technology Transfer Advancement Act**

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (“NTTAA”), Public Law 104-113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. This Proposed Rule does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

#### **10. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations**

Executive Order 12898 (59 FR 7629) directs Federal agencies to determine whether the Proposed Rule would have a disproportionate adverse impact on minority or low-income population groups within the project area. The Proposed Rule would not significantly affect any low-income or minority population.

**List of Subjects in 40 CFR Part 228**

Environmental protection, Water pollution control.

Dated: April 2, 2014.

**Samuel Coleman,**  
*Deputy Regional Administrator, Region 6.*

In consideration of the foregoing, EPA is proposing to amend part 228, chapter I of title 40 of the Code of Federal Regulations as follows:

**PART 228—CRITERIA FOR THE MANAGEMENT OF DISPOSAL SITES FOR  
OCEAN DUMPING**

1. The authority citation for part 228 continues to read as follows:

**Authority:** 33 U.S.C. 1412 and 1418.

2. Section 228.15 is amended as follows:

a. By removing and reserving paragraphs (j)(1) and (4); and

b. By revising paragraphs (j)(16) introductory text and (j)(16)(v) and (vi) to read as follows:

**§ 228.15 Dumping sites designated on a final basis.**

\* \* \* \* \*

(j)\* \* \*

(16) Corpus Christi New Work ODMDs, Corpus Christi, Texas.

\* \* \* \* \*

(v) *Period of Use:* Continuing use.

(vi) *Restrictions:* Disposal shall be limited to suitable dredged material from the greater Corpus Christi, Texas vicinity. Disposal shall comply with conditions set forth in the most recent approved Site Management and Monitoring Plan.

\* \* \* \* \*

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